

REMARKS

In the instant Office Action on Form PTO-326 (Office Action Summary) under the subheading "Status", item 1 states that the instant Office Action is responsive to Applicants' communication filed on July 15, 2002. Further, under the subheading "Detailed Action" on page 2 of the instant Office Action, it is stated that Applicants' amendment and terminal disclaimer of July 15, 2002 are entered. In Applicants' communication dated July 15, 2002, Applicants responded to the previous Office Action dated January 15, 2002 in which the Examiner objected to the specification under 37 CFR 1.53, and to Claims 45-48, 56-59, 67-70 and 79-82 under 35 U.S.C. 112, first paragraph and rejected Claims 38-82 under the judicially created doctrine of obviousness-type double patenting and Claims 38-44, 49-55, 60-66 and 71-78 under 35 U.S.C. 103(a) as being unpatentable over Seyffart, et al. (US 4,879,280), and Breborowicz, et al. (EP 0 555 087 A1) in view of the "Textbook of Biochemistry." In the instant Office Action, the Examiner has not maintained the above-mentioned objections and rejections. Therefore, the Examiner must be of the opinion that Applicants' arguments and amendments submitted in its communication of July 15, 2002 are deemed persuasive and have overcome all of the Examiner's objections and rejections in the previous Office Action dated January 15, 2002.

ELECTION/RESTRICTIONS

The Examiner purports that restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 38-48, drawn to compositions comprising at least one amino sugar, classified in class 514, subclass 23.

II. Claims 49-82, drawn to methods of performing peritoneal dialysis, treating a patient suffering from renal failure, and reducing at least one complication associated with peritoneal dialysis, classified in class 514, subclass 23.

The Examiner purports that the inventions are distinct, each from each other because inventions I and II are related as product and process of use. The Examiner also purports that the inventions can be shown to be distinct if the product as claimed can be used in a materially different process of using that product. The Examiner further purports that in the instant case, a composition comprising at least one amino sugar can be used in a materially different process (for example, see col. 18, lines 45-50 of United States Patent No. 4,996,296 to Pecht, et al.).

Applicants provisionally elect the invention of Group I (i.e., Claims 38-48, drawn to compositions comprising at least one amino sugar). Applicants are of the opinion that since they have provisionally elected claims directed to a product, if the product claims are subsequently found to be allowable, Applicants may rejoin process claims containing the subject matter of withdrawn process Claims 49-82, if said process claims depend from or otherwise include all the limitations of the allowable product claims.

The Examiner also purports that the claims are generic to a plurality of disclosed patentably distinct species comprising at least one amino sugar, at least one electrolyte, and at least one additional agent, and thus Applicants are required under 35 U.S.C. 121 to elect a single disclosed specified from each grouping.

Applicants provisionally elect the species N-acetylglucosamine as the at least one amino sugar, the species sodium as the least one electrolyte and the species glucose as the at least one additional agent, the claims readable thereon being generic Claim 39 and species Claims 40 to 48. Applicants are of the opinion that upon the allowance of a generic claim (such as, for example, Claim 39), Applicants will be entitled to

consideration of claims to additional species which are written in dependant form or otherwise include all of the limitations of the allowed generic claim as provided by 37 CFR, Section 1.141.

Applicants are further of the opinion that the inventorship need not be amended in compliance with 37 CFR 1.48(b) since all of the currently named inventors are inventors of all of the claims in the application.

Thus, in view of the above, Applicants believe that they have addressed all of the issues raised by the Examiner in the instant Office Action dated October 22, 2002.

Should the Examiner have any questions or comments, he is respectfully requested to contact Applicants' Representative, Kitt Sinden, collect, at (905) 771-6414 at his convenience.

Respectfully submitted,

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